

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EXXONMOBIL OIL CORPORATION,)
A New York Corporation,)

Plaintiff,)

v.)

Case No. 08 CV 3064

D CONSTRUCTION MANAGEMENT CO.)
INC., an Illinois Corporation, **PT FERRO**)
CONSTRUCTION COMPANY, INC., an Illinois)
Corporation, **TRANSYSTEMS CORPORATION,**)
a Missouri Corporation, and **CONSOER**)
TOWNSEND ENVIRONDYNE ENGINEERS,)
INC., a Delaware Corporation,)

Judge Norgle
Magistrate Judge Schenkier

Defendants.)

**PLAINTIFF'S ANSWER TO AFFIRMATIVE DEFENSE
OF P.T. FERRO CONSTRUCTION COMPANY, INC.**

Now comes the Plaintiff, ExxonMobil Oil Corporation (hereinafter "EMOC"), by and through its attorneys, Brumund, Jacobs, Hammel, Davidson & Andreano LLC, and for its Answer to the Affirmative Defense to Count III of its Complaint pleaded by Defendant, P.T. Ferro Construction Company, Inc. (hereinafter "Ferro"), states as follows:

AFFIRMATIVE DEFENSES

1. Defendant owed no duty to third parties, including Plaintiff, to judge the plans, specifications or instructions (sic), specifications or instructions it has merely contracted to follow, and Defendant in no way deviated from such plans.

ANSWER: Denies.

2. Plaintiff was contributorily negligent in:
 - a) failing to locate and mark the existence of the conduits and electrical lines;
 - b) failing to advise any defendant of the location or existence of the conduits and electrical lines;
 - c) failing to take any action to halt the excavation upon learning that such excavation had begun;
 - d) failing to participate in Illinois' State-Wide-One-Call Notice System; and
 - e) failing to notify the State-Wide-One-Call Notice System (J.U.L.I.E.) of the location or existence of the conduits.

ANSWER: Denies.

3. Plaintiff designed and installed the conduits in a manner such that it was reasonably foreseeable that they would be struck by those performing ordinary maintenance or construction on or near the roadway.

ANSWER: Denies.

WHEREFORE, the Plaintiff, ExxonMobil Oil Corporation, by and through its attorneys, Brumund, Jacobs, Hammel, Davidson & Andreano LLC, respectfully requests this Honorable Court to enter judgment in its favor, and against Defendant P.T. Ferro Construction Company, Inc., and for such further relief as it deems just and necessary.

ExxonMobil Oil Corporation

By: /s/ Frank P. Andreano
One of Its Attorneys

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